

IEEE SA COMMERCIAL TERMS & CONDITIONS POLICY

PRIMER SERIES

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COMMERCIAL TERMS & CONDITIONS POLICY

Commercial terms and conditions include any requirements that

- Limit competition or trade, or
- Should be a part of market negotiation proceedings

IEEE Standards Association (IEEE SA) has established a Commercial Terms & Conditions policy that applies to materials developed by participants in IEEE SA activities.

The policy is outlined in the following:

- [Clause 6.2](#) and [Clause 6.4.6](#) of the *IEEE SA Standards Board Operations Manual*
- [Antitrust and Competition Policy: What You Need to Know](#)

Training is available via an IEEE SA Learning & Development course:

[Understanding IEEE SA's Antitrust, Competition, and Commercial Terms Policies](#)

WHY IS THE COMMERCIAL TERMS & CONDITIONS POLICY SO IMPORTANT?

Consensus standards development rests on some basic concepts that are accepted and expected by many regulators around the world. These concepts are foundational to important treaties such as the World Trade Organization *Technical Barriers to Trade*.

A key concept is that standards are expected to **improve competition** and **enhance trade**. These pro-competitive outcomes are the reasons why standards developing organizations (SDOs) are provided some protections for their activities. However, these protections rely on SDOs complying with laws, in particular, antitrust/competition laws and regulations.

The IEEE SA Commercial Terms & Conditions Policy is intended to keep IEEE's standards development activities compliant with antitrust/competition laws.

This helps IEEE and participants in IEEE SA activities avoid legal claims that can result in investigations or litigation possibly leading to large damages and reputational harm.

WHAT ARE SOME WAYS THAT COMPETITION OR TRADE MIGHT BE UNLAWFULLY LIMITED?

- The standard uses proprietary marks rather than technical requirements
 - Proprietary marks include trademarks, service marks, and brands
 - Example: Perform a “Google search” rather than an “internet search”

There are many search engines. Identifying a specific search engine limits competition by those not listed in the standard. Look out for words used as adjectives that may be trademarks You can check for trademarks using tools provided by the U.S. Patent and Trademark Office (uspto.gov) or doing an internet search for the term to see if it is a trademarked term for a specific product, entity, process, etc.
 - **Think: How can I describe the process or requirement using technical terms rather than the name or trademark of a commercial product, service, or entity?**

- The standard identifies a single entity or product to be used, or not used, by implementers
 - Example: Requiring that a specific conformance assessment entity be used, or a single testing facility or training organization.

If there are other acceptable alternatives, it is not appropriate to limit the choices of implementers. An exception is provided where there is only one source of a product or service at the time of approval of the standard. In that case the standard should still provide a technical description of the product or service, but it can also include a footnote to make implementers aware of the sole source. IEEE standards must include text in the footnote indicating that the information is provided for the convenience of the user and is not an endorsement by IEEE of the product or service. Any equivalent product or service can be used if one becomes available.
 - **Think: Am I limiting the options of implementers of the standards and possibly disenfranchising other entities from competing?**

WHAT ARE SOME WAYS THAT COMPETITION OR TRADE MIGHT BE UNLAWFULLY LIMITED?

- The standard provides a list of products, companies, or product numbers
 - Example: Providing a list of available components that can be used
The list may not be complete, and other components might be available in the future that are not listed. Note that it doesn't matter whether the entities provide the product or service at no cost (e.g., Open Source products or services). Organizations often use products or services as loss leaders to encourage customers to use other products and services.
 - **Think: Am I limiting the ability for a new entrant in a market to compete?**

- The standard endorses a specific company, product, or service
 - Example: Identifying a specific company, product, or service as of high reputation or quality or a good example
Identifying a company, product, or service can, in and of itself, be interpreted as an endorsement and can provide a competitive advantage. This is also true of identifying brand-name tools, processes, components, licenses, manufacturer lists, service provider lists, and product lists.
 - **Think: Can an implementer interpret inclusion of the information as an IEEE endorsement of one or more entities, products, or services over other entities, products, or services?**

- The standard provides requirements that will limit global trade
 - Example: Using requirements without legitimate technical justification to make it difficult for entities from a specific country or geographic region to produce compliant implementations of a standard
Standards are not permitted to impede trade without valid technical rationale, and all attempts should be made to avoid these situations.
 - **Think: Am I limiting the ability of entities to participate in global trade?**

WHAT ARE TERMS THAT ARE PART OF MARKET NEGOTIATIONS?

- The standard includes terms that are to be negotiated between a buyer and a seller
 - Buyers and sellers will normally negotiate over price. Never discuss or set selling prices of compliant implementations (or acquisition costs of inputs) in the standard. “Price” includes discounts, rebates, credit terms, and anything else that effectively increases or decreases the price.
 - Non-price terms (such as guarantees, warranties, reworks, indemnities, buybacks, and employment salaries) can also impose significant costs on a seller or provide significant economic benefits to a buyer. Buyers and sellers will often negotiate these terms. A standard should never discuss or set these economic terms.
 - Example: Requiring a seller to guarantee product performance for a specified number of years or to buyback end-of-life products or components is something that should be left to buyers and sellers to negotiate.
 - **Think: *Is this something that parties would likely want to negotiate or bargain over?***

WHAT STEPS SHOULD I TAKE?

Always look to describe technical requirements. Keep to technical descriptions wherever possible.

Search if you believe the term is a proprietary mark (search on uspto.gov or do an internet search). Some indicators that a term is a proprietary mark:

- Trademark symbol such as TM, [®], or SM
- Capitalized term
- Brand used as an adjective
- Term used as a brand name

Use the description of the trademark (including the description on uspto.gov) to help describe the concept.

If there is a sole source for a component, material, product, or service, you can indicate that in a footnote. “Sole source” means that at the time of approval of the standard, there was only one available source that could be used. Use the language provided in Clause 8 of the [IEEE SA Standards Style Manual](#).

THANK YOU
